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IN THE
Supreme Court of the United States

No. **706**

QUALITY AND SERVICE LAUNDRY, INC., *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FOURTH CIRCUIT AND BRIEF IN SUP-
PORT THEREOF.**

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**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FOURTH CIRCUIT.**

*To the Chief Justice of the United States and Associate
Justices of the Supreme Court of the United States:*

Quality and Service Laundry, Inc., a body corporate, the petitioner above named, respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fourth Circuit affirming a decision and enforcing an order of the National Labor Relations Board. Judgment was rendered in the Circuit Court of Appeals on November 6, 1942, their number 4983, reported in 131 Fed. (2nd) 182.

This was a petition to enforce a decision of the National Labor Relations Board ordering, among other things, the petitioner to offer, upon application, reinstatement to certain employees, eight of whom while on strike had collected money belonging to petitioner's customers, retained it, and converted it to their own use.

JURISDICTION.

The jurisdiction of this Court is invoked under Section 240 (A) of the Judicial Code as amended, Title 28 U. S. C., Sec. 347; and Sec. 10 (E) and (F) of the National Labor Relations Act 29 U. S. C., Sec. 160.

SUMMARY STATEMENT OF MATTERS INVOLVED.

Petitioner is a Maryland corporation operating a laundry at Bladensburg, Maryland. It was charged with certain unfair labor practices and on March 31, 1942, the National Labor Relations Board issued its decision setting forth its findings of fact, conclusions of law, and order, reported in Vol. 39 P. 970, N. L. R. B.

The Board ordered respondent to cease and desist from its unfair labor practices; upon request to bargain collectively with the Union; to reinstate, upon application, certain of its striking employees, eight of whom had collected after the strike began, retained in their possession and converted to their own use, funds of the petitioner. The petitioner charged that these employees were guilty of the crime of "Embezzlement". Nevertheless, the Board ordered the petitioner to make whole with back pay those among them whom the petitioner may have already improperly denied, or might thereafter improperly deny reinstatement.

The Board petitioned the Circuit Court of Appeals for the Fourth Circuit to enforce said order. The Court found that there was evidence to support the order and enforced same.

QUESTION PRESENTED.

The case presents the question, whether striking employees are entitled to reinstatement, if while on strike they collect money belonging to the employer, fail and refuse to turn it over to the employer, and convert it to their own use.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

(1) The United States Circuit Court of Appeals for the Fourth Circuit has decided an important question of law in conflict with the decision of the United States Circuit Court of Appeals for the Sixth Circuit on the question involved herein.

National Labor Relations Board v. Thompson Products, Inc., 97 Fed. (2nd) 13 at page 16.

(2) The United States Circuit Court of Appeals for the Fourth Circuit has decided an important question of local law (Maryland) in a way probably in conflict with the Maryland statute and in conflict with applicable Maryland decisions.

Sec. 140, Article 27 Annotated Code of Maryland.
Crouse v. State of Maryland, 163 Md. 431.

(3) The United States Circuit Court of Appeals for the Fourth Circuit has decided an important question of law in conflict with the decision of the Supreme Court of the United States.

National Labor Relations Board v. Fansteel Metallurgical Corp., 306 U. S. 240-3.

WHEREFORE, it is respectfully prayed that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fourth Circuit, commanding that Court to certify and send to this Court for its review and determina-

tion the full and complete transcript of the record and all proceedings in the case at bar, their number 4983, and that the judgment of said United States Circuit Court of Appeals for the Fourth Circuit may be reversed by this Honorable Court and that your petitioner may have such other and further relief in the premises as this Honorable Court may deem just and proper and your petitioner will ever pray.

QUALITY AND SERVICE LAUNDRY, INC.,

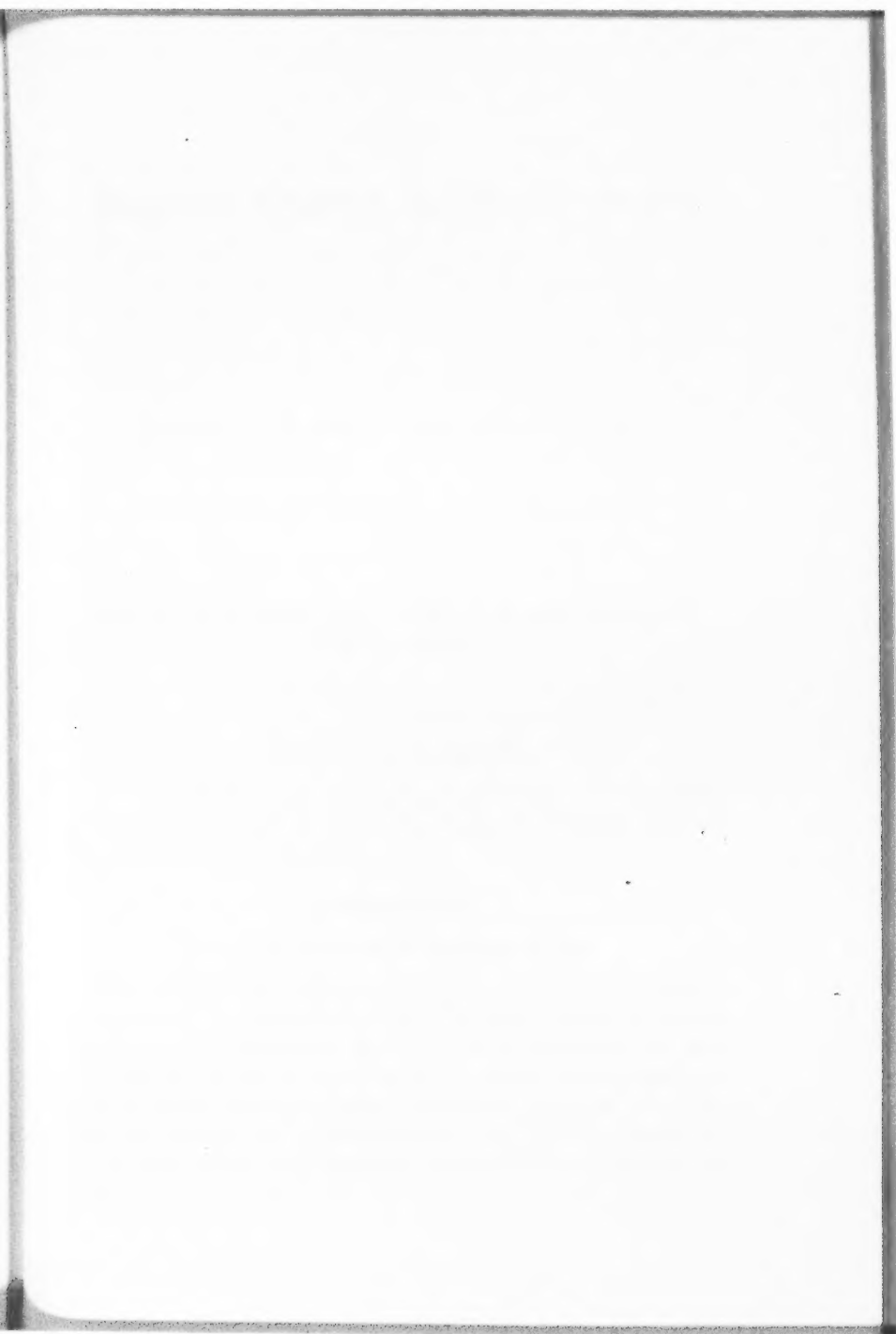
By ROLAND BERGER,

President.

WALTER L. GREEN,

LOUIS A. SPIESS,

Counsel for Petitioner.





IN THE

Supreme Court of the United States

No.

QUALITY AND SERVICE LAUNDRY, INC., *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

**BRIEF IN SUPPORT OF PETITION FOR WRIT OF
CERTIORARI.**

Error to be Assigned.

The Circuit Court of Appeals erred in enforcing the order of the National Labor Relations Board to reinstate certain of petitioner's employees.

ARGUMENT.**This Case Involves a Question of Law.**

The effect of the action of the Circuit Court of Appeals in affirming the decision of the National Labor Relations Board and in enforcing its order is to establish the rule that employees while on strike may collect, retain, and convert to their own use, money belonging to their employer and be entitled to reinstatement. The Circuit Court refused to reverse the National Labor Relations Board because:

(1) A controversy existed as to what each employee should account for;

(2) It appeared that the shortage was covered by a cash bond; and

(3) The Board found that these employees "acted in good faith and with color of legal right; and the respondent does not plead their alleged wrong doing in good faith, but rather as a further device to avoid the consequences of its unfair labor practices".

It is respectfully submitted that this involves a question of law. Regard should have been had for the Maryland Statute defining and providing a penalty for the unlawful acts sanctioned by the decision. The Court, therefore, should have reversed the National Labor Relations Board.

Sec. 140, Art. 27, Annotated Code of Maryland.
Crouse v. State of Maryland, 163 Md. 431.

In its decision the National Labor Relations Board (P. 13) said that uncontroverted evidence was introduced by Board's counsel to show that the money belonging to the petitioner was retained by the strikers solely to protect what they conceived to be well founded claims which they had against the petitioner for salary and commissions; and that they had cash bonds to cover any money which they had collected and retained. This, we think, the Court will hold to be immaterial.

In most all cases of embezzlement from employers, there is a bond to protect the employer. But this does not give the employee the right to take and keep the employer's money.

From this it is clear that the question here involved is more than a mere question of fact. The facts cited in the Board's decision indicate a clear violation of the criminal law of Maryland; and the sanction of such a violation by a Federal Governmental Agency, and in turn by a Federal

Appellate Court, is repugnant to the peace, government and dignity of the State of Maryland.

This Decision of the United States Circuit Court of Appeals for the Fourth Circuit is in Conflict with a Decision of the United States Circuit Court of Appeals for the Sixth Circuit.

In the decision of the United States Circuit Court of Appeals for the Sixth Circuit, one Casterline, an employee of Thompson Products, Inc., took an ornamental lamp belonging to a caterer who had provided food and decorations for a dinner given for the employees of said firm. This lamp had a fair market value of fifty cents. He freely admitted taking the lamp with the intent to appropriate it to his own use. When charged with taking the lamp he offered to pay for it or return it, and did abandon it in the banquet hall.

The Court held in that case that an employer may properly refuse to continue in his employ any person who has shown himself dishonest or otherwise unfit for the service in which he is engaged; and that the National Labor Relations Act does not abrogate any of these prerogatives, nor can employees use it as a shield for dishonesty or incompetent and inefficient service.

National Labor Relations Board v. Thompson Products, Inc., 97 Fed. (2nd) 13.

The collection of the employer's money and its conversion to the use of the employee, is dishonest, and is made a crime by the Maryland Statute. It will be readily seen that these two decisions are therefore in conflict.

The United States Circuit Court of Appeals for the Fourth Circuit Has Decided an Important Question of Local Law in a Way Probably in Conflict with the Maryland Statute and in Conflict with Applicable Maryland Decisions.

We submit that this point has been fully covered. Certainly the sanction by the National Labor Relations Board and the Circuit Court of specific acts of "embezzlement" within the State of Maryland is in conflict with the State Statute cited above and the decision in *Crouse v. State of Maryland*, 163 Md. 431.

The Maryland Statute.

"Whosoever being a cashier, servant, agent, or clerk to any person, or whosoever being a cashier, servant, agent, officer or clerk to any body corporate, or being employed for the purpose or in the capacity of a cashier, servant, agent, officer or clerk, by any person or body corporate shall fraudulently embezzle any money, goods, bill, note, bond, check, evidence or debt, or other valuable security or effects which, or any part whereof, shall be delivered to or received, or taken into possession by him for or in the name or on account of his master or employer, shall be deemed to have feloniously stolen the same from his master or employer, although such money, goods, bill, note, bond, check, evidence of debt, or other valuable security or effects was not received into the possession of such master or employer, otherwise than by the actual possession of his cashier, servant, agent, officer, clerk or other person so employed, and being convicted, thereof, shall be punished by imprisonment in the jail or house of correction, for not more than three years, or in the penitentiary for not more than fifteen years. In every indictment for a violation of this Section, when the offense shall relate to coin or notes circulating as money, it shall be sufficient to allege the embezzlement to be of money, without specifying any particular coin or notes circulating as money; and such allegations, so far as regards the description of the property, shall be sustained if the offender shall be proved to have embezzled any amount of coin or notes circulating as money, although the particular species

of coin or notes circulating as money, of which such amount was composed, shall not be proved.”

Section 140, Article 27, Annotated Code of Maryland.

The Crouse Case.

Crouse was the cashier of the Pleasant Valley Bank of Carroll County, Maryland. He received into his possession money belonging to the Bank. He was indicted, demurred to the indictment, was tried and convicted. The only question raised on appeal was the ruling on the demurrer to the indictment. Appellant contended that the indictment was defective because it failed to assert that the acts with which he was charged were feloniously committed by him. The Court held that actual felonious intent is not a necessary element of the crime created by the Statute. Felonious intent is a conclusion of law from the commission of the crime described in the Statute.

Crouse v. State of Maryland, 163 Md. 431.

The Fansteel Case.

The Fansteel Metallurgical Corporation refused to reinstate certain Union members employed by the corporation who had engaged in a “sit down” strike. The National Labor Relations Board ordered the corporation to reinstate these employees and upon the question of the authority of Board to so require, Mr. Chief Justice Hughes, speaking for this Court, said:

“The seizure and holding of the buildings was itself a wrong apart from any acts of sabotage. But in its legal aspect the ousting of the owner from lawful possession is not essentially different from an assault upon the officers of an employing company, or the seizure and conversion of its goods, or the despoiling of its property or other unlawful acts in order to force compliance with demands. To justify such conduct because of the existence of a labor dispute or of an unfair labor practice would be to put a premium on resort to force

instead of legal remedies and to subvert the principles of law and order which lie at the foundations of society. * * *

"We are unable to conclude that Congress intended to compel employers to retain persons in their employ regardless of their unlawful conduct,—to invest those who go on strike with an immunity from discharge for acts of trespass or violence against the employer's property, which they would not have enjoyed had they remained at work. * * *

"The important point is that respondent stood absolved by the conduct of those engaged in the 'sit-down' from any duty to reemploy them, but respondent was nevertheless free to consider the exigencies of its business and to offer reemployment if it chose. In so doing it was simply exercising its normal right to select its employees."

National Labor Relations Board v. Fansteel Metallurgical Corporation, 306 U. S. 240.

CONCLUSION.

It has been shown that the question involved in this case is a question of law.

This matter goes deeper than a mere labor controversy. We have here a question of whether a governmental agency should sanction dishonest acts to accomplish purposes it deems paramount. Courts should still hold that money collected by employees should be promptly and properly accounted for; and that obedience to a criminal statute of a Sovereign State having its origin in the year 1820 and affirmed with the adoption of Code of 1939, should be paramount to victory in a labor dispute of much later origin.

Should this Honorable Court deny petitioner's request for a Writ of Certiorari, it will mean that hereafter employees, while on strike, may with impunity, take their employer's money and convert it to their own use, in open defiance of the Criminal Statutes of the State in which they reside.

The facts were sufficiently set out to cause the Circuit Court to apply the Maryland Statute and reverse the Na-

tional Labor Relations Board. Furthermore, the decision of the Circuit Court of Appeals for the Fourth Circuit is in conflict with the decision of the Circuit Court of Appeals for the Sixth Circuit, and also the decision of this Court in the Fansteel case. The Court of Appeals of the Fourth Circuit erred in enforcing the order of the Board.

It is therefore respectfully submitted that the Writ of Certiorari should be granted as prayed for, and the decision of the Circuit Court of Appeals should be reviewed.

Respectfully submitted,

WALTER L. GREEN,
LOUIS A. SPIESS,
Counsel for Petitioner.



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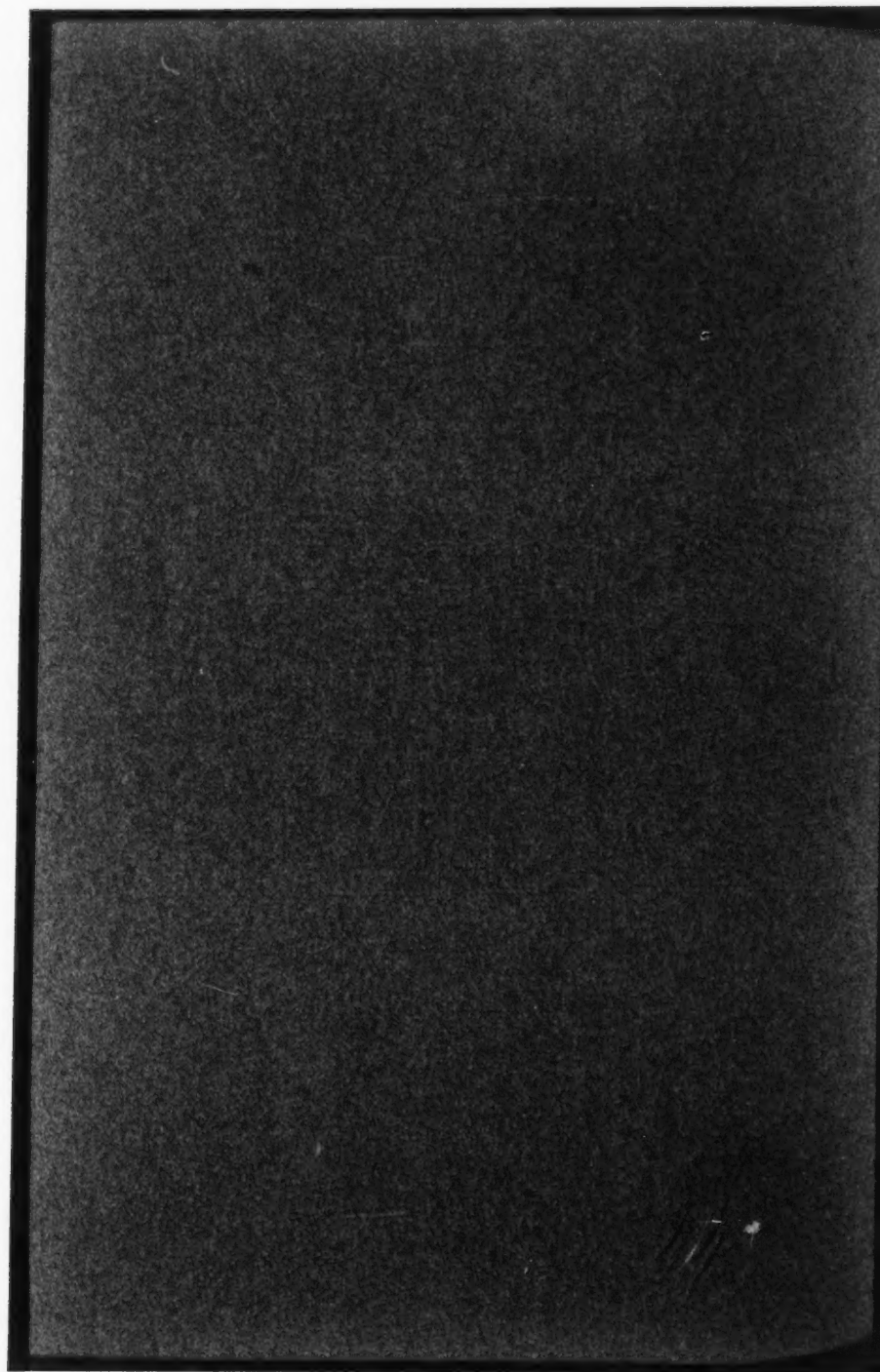
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(1)



In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 706

QUALITY AND SERVICE LAUNDRY, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH
CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN
OPPOSITION

OPINIONS BELOW

The *per curiam* opinion of the court below (R. 251-253) is reported in 131 F. (2d) 182. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 3-25) are reported in 39 N. L. R. B. 970.

JURISDICTION

The decree of the court below (R. 254) was entered on November 6, 1942. The petition for writ

(1)

of certiorari was filed on February 4, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) of the National Labor Relations Act.

QUESTION PRESENTED

Whether that portion of the Board's order, sustained by the court below, which requires petitioner to offer reinstatement to striking employees who under color of legal right collected and retained money claimed by petitioner, is valid and proper.

STATUTE INVOLVED

The pertinent provision of the National Labor Relations Act is set out in the Appendix, *infra*, p. 9.

STATEMENT

Upon the usual proceedings, the Board, on March 21, 1942, issued its findings of fact, conclusions of law, and order (R. 1-25). The Board found that petitioner had refused to bargain with the Union,¹ which a majority of its drivers had designated as their collective bargaining representative, and had otherwise interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed by the Act, and that, because of these unfair labor practices, the Union called a strike at

¹ Teamsters Joint Council #55, affiliated with the American Federation of Labor through International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (R. 4).

petitioner's plant (R. 4-17). As a remedy for the unfair labor practices found, the Board ordered petitioner to cease and desist therefrom; upon request, to bargain collectively with the Union; to reinstate, upon application, all but two² of the striking drivers; and to post appropriate notices (R. 23-25).

Among the striking drivers required by the Board's order to be offered reinstatement were eight whom petitioner contended it should not be required to reinstate because they had collected and retained certain sums of money belonging to petitioner. The circumstances surrounding the retention of the money are as follows:³

Although it was against petitioner's rules for the drivers to extend credit to customers, they nevertheless occasionally did so (R. 18; 78, 81). The drivers considered themselves personally liable for the credit extended (R. 18; 61, 74, 78), and posted cash bonds with petitioner sufficient in amount to cover the credit extended (R. 19; 61, 74). After June 26, 1941, when the strike was called, eight of the drivers who had thus extended their personal credit collected and retained sums due for laundry bundles which they had previously left

² One of the two testified that he did not desire reinstatement; the other was convicted of a misdemeanor for which he was fined \$500 and given a one-year suspended jail sentence (R. 17-18).

³ In the following statement of facts the references preceding the semicolon are to the Board's findings and the succeeding references are to the supporting evidence.

with customers, for the purpose of offsetting their claims against petitioner for salary and commissions due them for work done during the three days preceding the strike and for their cash bonds in the possession of petitioner (R. 18, 19; 72-73, 81-82). Between July 10 and 15, 1941, petitioner sent a letter to each of these drivers requesting him to call at the office of petitioner's president, Berger, and make an accounting for any money belonging to petitioner (R. 18; 72, 141). The drivers consulted with the Union's attorney, Keane, about the letters, and he persuaded them not to see Berger individually but to permit him, Keane, to negotiate with Berger for them (R. 18; 58, 72, 120). Keane then consulted with Berger and petitioner's counsel upon several occasions about a settlement of the accounts. The parties were unable to agree on the amounts which the drivers owed, since Berger asserted that they were responsible for business done for the entire week during which the strike was called, although new and nonstriking drivers were operating the routes during the last three days of the week. (R. 18-19; 58, 70-71, 74, 118-119, 121-124, 162.) Keane, on behalf of the drivers, offered to turn over to Berger the amounts which the drivers collected, but Berger refused to accept such amounts, saying that he did not want "piecemeal" settlements (R. 123-124, 74, 81).⁴ At the time of the hearing, the

⁴ One of the striking drivers, Randolph, after receiving a letter from Berger requesting an accounting, abandoned the

differences had not been resolved and a final accounting had not yet been made (R. 19; 57, 124).⁵

Petitioner had on deposit from its drivers cash bonds sufficient to cover the amount which the drivers had collected and retained; moreover, some of the drivers had solicited and collected rugs and furs which were in storage and upon which, in the normal course of events, petitioner would owe them substantial amounts in commissions (R. 19; 61-62, 72-74, 82, 118-119, 163).

Upon the above facts the Board concluded that "the strikers who retained money acted in good faith and with color of legal right; and that [petitioner] does not plead their alleged wrongdoing in good faith, but rather as a further device to avoid the consequences of its unfair labor practices" (R. 19-20).

strike and returned to work (R. 19; 53, 165-166). In his case, as in the case of the eight strikers here under consideration, there was a disagreement with respect to the amount he owed, but petitioner compromised the difference and accepted an amount less than that which it claimed Randolph owed (R. 19; 165, 166). As the Board pointed out, "From all that appears, the principal difference that existed between Randolph and the other drivers who owed money was that he abandoned the strike and they continued it. The retention of funds by Randolph did not bar his reinstatement; [petitioner] has shown no bona fide or convincing reason why other striking drivers should be treated differently" (R. 19).

⁵ Although Berger had consulted the local district attorney with regard to filing charges of embezzlement against the drivers, no proceedings had been instituted against them prior to the hearing (R. 19; 164), or, so far as the record discloses, since the hearing.

On August 8, 1942, the Board filed in the court below a petition for enforcement (R. 243-247), and on November 6, 1942, the court below handed down its *per curiam* opinion (R. 251-253) and entered its decree (R. 254) enforcing the Board's order.

ARGUMENT

Petitioner claims that the Board erred in ordering the reinstatement of eight strikers because they collected and retained moneys which petitioner claimed belonged to it but which did not exceed other amounts which the strikers claimed petitioner owed them. The Board's finding that the strikers' action was in good faith and under color of right (R. 19-20) was accepted by the circuit court of appeals (R. 253) because it has ample support in the following facts of record: On occasion drivers would extend credit to customers, contrary to petitioner's rules, but petitioner was well protected by cash bonds which it had required the drivers to post (R. 61, 74, 78, 82). The moneys which the strikers collected were payments for the laundry bills for which they, as drivers, had allowed credit (R. 61, 74, 81), and which would have been charged against their cash bonds had they not collected (R. 78). Petitioner did not return the cash bonds to the strikers, nor pay them the three days' pay and the commissions on fur and rug storage which the strikers claimed peti-

tioner owed them. The strikers, on the other hand, refused to pay anything to petitioner until petitioner paid them, although the strikers offered settlement (R. 61, 73-74, 123-124).

Petitioner's contention that a conflict exists between the decision below and other decisions is based on its bizarre construction of Maryland law that the strikers' conduct is embezzlement.⁶ This construction is not supported by the face of the state statute nor by the state decision cited (*Crouse v. State of Maryland*, 163 Md. 431). It was not accepted by the circuit court of appeals (R. 252-253) for the circuit which embraces Maryland. It is, therefore, a question which this Court will not review. *Helvering v. Stuart*, decided November 16, 1942, Nos. 48 and 49, this Term.

As the conduct of the strikers whose reinstatement was ordered was not unlawful and did not involve any use of force, the decision below ordering reinstatement is not in conflict with *National*

⁶ In support of its finding that the strikers were acting under color of legal right, the Board quoted the following (R. 20) from Section 464, *Restatement of Agency*:

"When Agent Has Lien :

"Unless he undertakes duties inconsistent with such a right or otherwise agrees that it is not to exist :

"(a) an agent has a right to retain possession of money, goods, or documents of the principal, of which he has gained possession in the proper execution of his agency, until he is paid the amount due him from the principal as compensation for services performed or as indemnity for money advanced or liability incurred by him in connection with such things."

Labor Relations Board v. Fansteel Metallurgical Corp., 306 U. S. 240, or with *National Labor Relations Board v. Thompson Products, Inc.*, 97 F. (2d) 13 (C. C. A. 6), as asserted by petitioner.

CONCLUSION

The decision of the court below is correct and presents neither a conflict of decisions nor any question of general importance. The petition should therefore be denied.

Respectfully submitted.

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VALENTINE BROOKES,
Attorney.

ROBERT B. WATTS,
General Counsel,

ERNEST A. GROSS,
Associate General Counsel,

RUTH WEYAND,
FANNIE M. BOYLS,
Attorneys,
National Labor Relations Board.

MARCH 1943.





APPENDIX

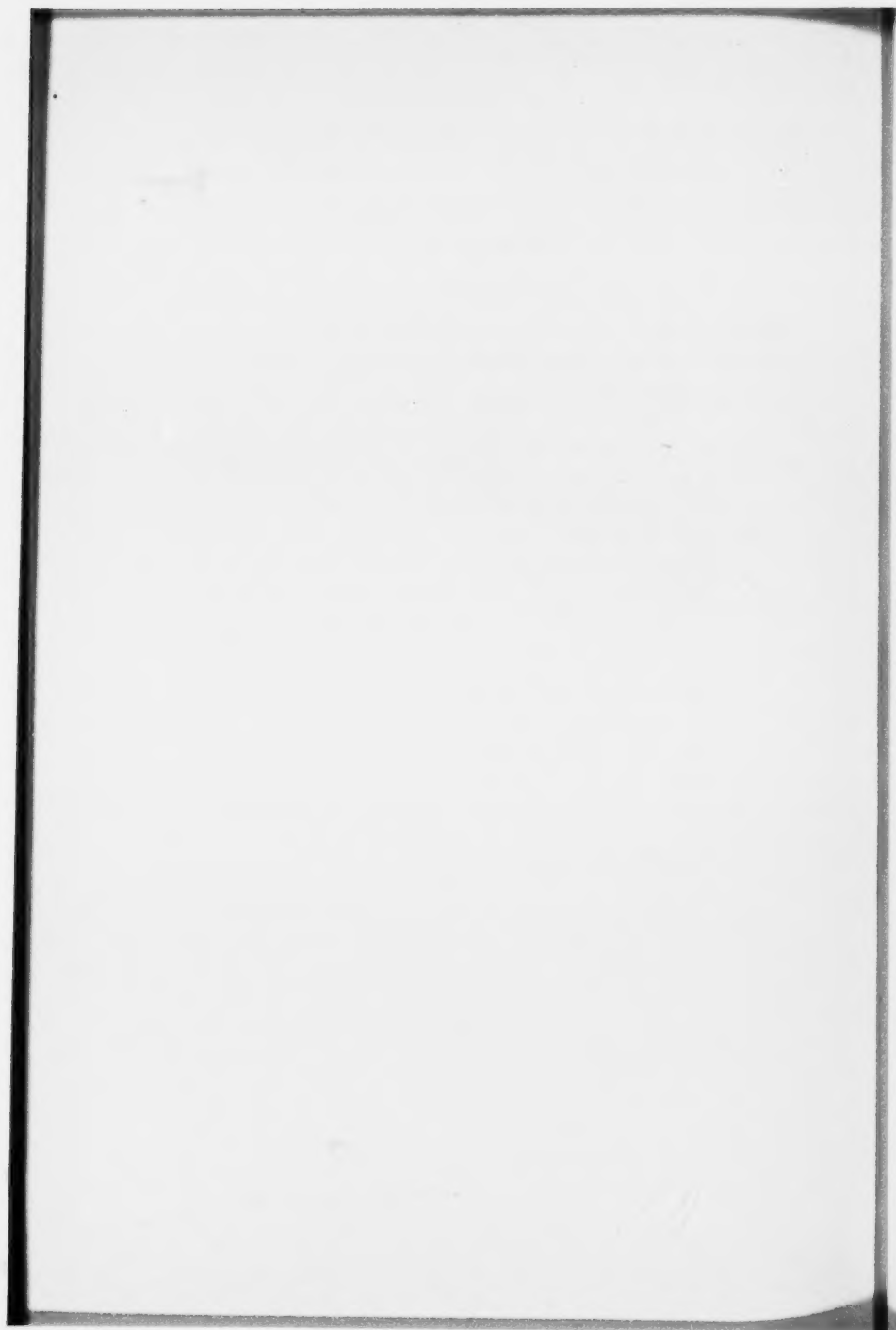
The pertinent provision of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*) is as follows:

SEC. 10.

* * * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

(9)



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MAR 12 1943

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**PETITIONER'S BRIEF IN REPLY TO BRIEF FOR THE
NATIONAL LABOR RELATIONS BOARD IN
OPPOSITION.**
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WALTER L. GREEN,
LOUIS A. SPIESS,
Counsel for Petitioner.



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**PETITIONER'S BRIEF IN REPLY TO BRIEF FOR THE
NATIONAL LABOR RELATIONS BOARD IN
OPPOSITION.**

In the Board's brief in opposition to the petition for the writ, it contends that the question presented to the Court is:

"Whether that portion of the Board's order, sustained by the Court below, which requires petitioner to offer reinstatement to striking employees, who under color of legal right, collected and retained money claimed by petitioner, is valid and proper."

Petitioner contends that this is not the question presented to this Court, but on the contrary, asserts that the question presented is:

"Whether striking employees are entitled to reinstatement, if while on strike they collect money belonging to the employer, fail and refuse to turn it over to the employer, and convert it to their own use."

The testimony in this case is indisputable that eight of the striking drivers of the petitioner, while on strike, collected money belonging to petitioner (their employer) and converted said money to their own use.

The record in this case is also indisputable that the employer never knew that any of said eight employees were collecting the company's money until its then working employees called upon the company's customers and were informed that the company's employees who were then on strike, had called upon said customers and in many instances had collected the company's money.

Upon the company ascertaining that its money had been so collected by its striking employees, it wrote a letter to each of said employees approximately twenty days after the strike, demanding of each of said eight striking employees the return to the company of the monies so collected.

The record shows, and it is undisputed, that said striking employees, after receiving said letter of demand, went to the attorney for the Union, and acting upon his advice refused to comply with the company's demand to return said money so unlawfully collected and converted. (Record 72.)

The Board in its brief in opposition to the issuance of the writ, contends that said striking employees had collected and retained said monies because of their apprehension that the company would hold them financially responsible for the credit said striking employees had extended their customers while working for the company. The testimony in this case fails to disclose a single instance where the employer ever attempted to place any forfeiture upon these striking employees' bonds or wages due them at the time they went on strike, notwithstanding this proceeding was instituted by the National Labor Relations Board against this company approximately four months after said employees had wrongfully collected and retained the company's money.

The brief for the National Labor Relations Board contends, (on page 7 thereof, footnote 6), that the collection and retention of said money by said striking employees was under the cover of an "agent's lien".

The very wording of this contention, is inconsistent with the statement in said footnote, wherein it is stated:

"Unless he undertakes duties inconsistent with such a right or otherwise agrees that it is not to exist:

"(a) An agent has a right to retain possession of money, goods, or documents of the principal, of which he has gained possession in the proper execution of his agency, until he is paid the amount due him from the principal as compensation for services performed or as indemnity for money advanced or liability incurred by him in connection with such things."

This contention in the Board's brief is inconsistent with the testimony of Long (Record 197) that these drivers had an agreement which reads as follows:

"The employee agrees at the time he delivers to the customers for the company any goods or articles on which it has rendered any of its services he will collect all sums due by said customers for said service and on the same day turn over to the company all sums so collected."

On page 200 of the Record, Long further testified:

"Q. Nor offered to make a settlement? A. No, I have not.

"Q. Although it has been requested of you? A. Yes sir.

"Q. Your counsel told you it was requested of him, did he not, I am referring to John Keane. A. Yes, he told me it was requested of him and they had a conference on the subject.

"Q. Did you ever give him the money with which to pay this? A. No, I did not.

"Q. You realize that that money belongs to the company, do you not? A. Yes, I realize it belongs to them."

The Board's brief attempts to give color of legality to the action of these striking drivers in collecting the company's

money and converting it to their own use by citing, at the bottom of page 4 of said brief, that one of the striking drivers named Randolph, after receiving a letter from Berger requesting an accounting, abandoned the strike and returned to work.

The fact that the company permitted any of the striking drivers to return to its employ notwithstanding the wrongful collection and conversion of its funds by said reinstated employees, does not in any manner create any legal rights in the striking employees who wrongfully collected and converted to their own use the company's money and refused at all times to return same on demand. This is clearly set forth by this Court in the case of *National Labor Relations Board v. Fansteel Metallurgical Corporation*, 306 U. S. 240, wherein the Court said, in part:

"The important point is that respondent stood absolved by the conduct of those engaged in the "sit-down" from any duty to re-employ them, but respondent was nevertheless free to consider the exigencies of its business and to offer re-employment if it chose. In so doing it was simply exercising its normal right to select its employees."

CONCLUSION.

From the foregoing it is believed that this Court will hold that this is a question not of "general importance" but of great importance for all employees who are placed in positions of trust in their employment, to the end that funds collected by them for said employers will not be converted to the use of said employees, and that this Court will hold that the decision of the Court below was incorrect and in conflict with the cases cited in the company's petition for writ of certiorari, and that the same will be granted.

Respectfully submitted,

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End

